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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fifth session

SUMMARY RECORD OF THE 1345th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 10 August 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Fourteenth periodic report of Iraq (continued) (CERD/C/320/Add.3)

1. At the invitation of the Chairman, the members of the delegation of Iraq resumed their places at the Committee table.

2. Mr. YOUSSIF (Iraq) underscored the importance attached by Iraq to the ongoing constructive dialogue pursued on the basis of legal rather than other grounds, with a view to reaching a common understanding of the best means of implementing the Convention.

3. Turning to the questions and comments put forward by the Country Rapporteur, he said that the reason the report included references to the reports submitted by Iraq to other human rights bodies was that article 5 of the Convention laid down the principle of non-discrimination in the observance of economic, social and cultural rights and civil and political rights, and Iraq, as a State party to the two International Covenants, had always reported on non-discrimination in the implementation of those rights. Other countries, too, had referred in their reports to those submitted to the various treaty bodies in an effort to avoid the repetition of information. Indeed, that practice had been encouraged by meetings of the persons chairing human rights treaty bodies.

4. The Iraqi Government had consistently called for a national dialogue with the various Kurdish factions so as to restore peace and security in the Autonomous Region, while at the same time safeguarding human rights and respecting the territorial integrity of the Iraqi State. The national dialogue had progressed significantly in the past, with documents ready for signature, but those efforts had been thwarted because of interference by certain foreign powers, in particular the United States of America.

5. In its concluding observations on the eleventh to thirteenth periodic reports, the Committee had welcomed national legislation devoted to the protection of the cultural identity and languages of national minorities in Iraq as a positive aspect. He further referred the Committee to paragraphs 80 to 92 of the fourteenth periodic report, which spelled out the cultural rights enjoyed by the Turkoman and Syriac-speaking communities.

6. Paragraphs 45 to 50 and 93 and 94 of the fourteenth periodic report explained the situation of the inhabitants of the Marshes.

7. All Iraqis enjoyed freedom of movement and the freedom to choose their place of residence anywhere in the country.

8. Concerning the question of Kuwaitis reportedly living in Iraq, article 1, paragraph 2, of the Convention stipulated that its provisions did not apply to discrimination between citizens and non-citizens. The matter therefore did not fall within the competence of the Committee. The question of Kuwaiti missing persons was covered by the relevant Geneva Conventions and

was the subject of work being done by a tripartite committee composed of representatives of Iraq, Kuwait and Saudi Arabia and allied States, under the auspices of the International Committee of the Red Cross. For humanitarian reasons, Iraq was keen to establish the whereabouts of all persons, including Iraqis in Kuwait, who had gone missing as a result of the armed conflict.

9. Regarding the situation in Iraq of Kurdish refugees from Turkey and Iran and of Iranian Arab refugees, and the possibility for Iraqi refugees in Europe to return to their country, he said that, although the question of refugees did not fall within the competence of the Committee either, the delegation could provide some information in the interests of constructive dialogue. There were a number of camps in Iraq for Kurds and Iranian Arabs, and they were periodically visited by the Office of the United Nations High Commissioner for Refugees (UNHCR). Iraq had done its utmost to assist those refugees in returning home or to find host countries for resettlement, as attested in UNHCR documents. As to Iraqi refugees living in Europe, many of them had been forced by economic difficulties brought on by the 10-year economic embargo to leave their country. Nothing was stopping them from returning.

10. With regard to alleged human rights violations in the northern Autonomous Region, he said that in the absence of control by a central authority, and as a result of the foreign military intervention there, the Autonomous Region had become the scene of armed conflict between factions and very serious violations of human rights. The Turkish military intervention in northern Iraq had resulted in still more tension and problems.

11. Replying to questions by other Committee members, he said that the periodic reports had already mentioned constitutional and legislative texts pertaining to the participation of Kurds in the central Government. The Vice-President of the Republic and a number of government ministers were from the northern Autonomous Region, and the chairmen of the Legislative and Executive Councils in the Autonomous Region took part in ministerial cabinet meetings. The Vice-President of the Iraqi National Council, too, was a Kurd. Many Kurdish citizens held high-ranking posts as judges, ambassadors and directors in the public service.

12. His Government did not believe that articles 200, 203 and 204 of the Penal Code were at variance with the Convention. It hoped, in a spirit of dialogue, that the Committee members could explain why some had contended that those articles needed to be amended to bring them in line with article 4, and perhaps propose possible formulas for such amendments.

13. The reason why property ownership in Baghdad was limited to those people who figured as inhabitants of the city in the 1957 census and to their children was that the Government wanted to maintain the demographic balance and to forestall a rural exodus to the capital. That measure covered all citizens, without any discrimination based on race.

14. Paragraph 48 of the periodic report gave details of the distribution of agricultural land in the Marshes region.

15. The provisions of the Convention had been published in the official gazette, the title of which was Iraqi Chronicles and which was widely read by administrative and judicial authorities. An advisory committee on human rights had published the Convention along with all human rights instruments ratified by Iraq, and other human rights organizations, too, had publicized the Convention.

16. Education was compulsory at the primary level, and was free of charge. Because Iraq was a party to the Convention against Discrimination in Education, all schools had the same State curriculum, regardless of the ethnic origin or race of the pupils and students who attended them. In addition, certain additional language rights were ensured for Kurdish, Syriac and Turkoman schools.

17. A question had been raised about the respective property rights of men and women. Iraqi legislation was based on Islamic law, and made provision for the independent financial status of both married and single women. Women were thus entitled to establish their own businesses. He referred members to Iraq's first periodic report to the Committee on the Elimination of Discrimination against Women, to which his country reported regularly.

18. Any victim of racial discrimination had the right to file a complaint if an act was committed that contravened articles 200, 203 or 204 of the Penal Code, and the judge was obliged to receive it and refer it to a competent court. The complainant would then be able to pursue the matter and prosecute the legal or natural person, public official or private individual who was in breach of the law. If a public official discriminated against a person, the victim could theoretically request compensation from the State. In practice, the Iraqi delegation was not aware of any such cases, but it would look into the matter and keep the Committee informed.

19. The idea of deploying human rights observers in Iraq raised the question of the credibility of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq, who had not been objective, had not engaged in a dialogue with the Government and had departed from the guidelines of the General Assembly, according to which thematic and country special rapporteurs were obliged to comply with international law and to respect the territorial integrity, national unity and political system of the countries they examined. The Special Rapporteur had instead chosen an approach based on politicization and condemnation, and had made proposals which by his own account were without precedent in United Nations practice. The idea of sending human rights observers had been put to the Commission on Human Rights as a rationalization measure, and had been rejected by a large number of States.

20. Some of the Committee members had misunderstood paragraph 107 of the fourteenth periodic report, which was not intended to address the work and practices of the Committee or other United Nations bodies, but those of certain Western countries. In defiance of the Charter of the United Nations which prohibited interference in the affairs of sovereign States, those countries had interfered in the internal affairs of Iraq under the pretext of defending minority rights and human rights. The Iraqi Government was in

favour of carrying on a dialogue to promote, reinforce and ensure human rights in accordance with its treaty obligations.

21. Foreigners in Iraq enjoyed full economic, social and cultural rights, provided they resided legally in the country.

22. The Chairman had asked about the approximately 3 million Egyptians who had lived and worked in Iraq, contributing to the development of the country, since the 1970s. Some still resided there, but many had left since 1990 as a result of the economic embargo and the aggression.

23. The Special Rapporteur had indeed alleged that forced deportations had occurred in the Kirkuk Governorate, and the Iraqi Government had already refuted those allegations in a letter to the General Assembly dated 14 November 1997 (A/C.3/52/7) and in a previous letter sent to the General Assembly in 1994 (A/49/394). During the war between Iran and Iraq some families had been resettled for their own safety from the border regions near Kirkuk and Khanaqin to areas further from the combat zone, but they had received compensation in accordance with the law.

24. Funds for Kurdistan were, under article 8 of the Autonomy Act of 1974, derived from two sources: the national budget and the National Development Plan, and the Kurdistan regional budget, which included the revenue from the taxes, fees, duties and fines indicated in the report (para. 59 (a)). On the related question of control over Kurdistan's mineral and water resources, they, like all other natural resources, belonged to the people as a whole and were administered by the central Government of Iraq for the benefit of all the people. Thus, the Autonomous Region had benefited proportionately from the resources in its own territory.

25. He observed that the delegation had come in a spirit of dialogue, and that it hoped the Committee had taken cognizance of the two major obstacles Iraq was facing, namely, the continued embargo, whose impact was tantamount to genocide, and the aggression through daily bombardments with depleted uranium weapons, whose dangerous consequences would extend to future generations as well.

26. Mr. HUSSAIN (Iraq), referring the Committee to the annexes to the report, said that for the period 1970-1990 the Autonomous Region had had a budget of 22 billion dollars, or 9 per cent of the total national appropriation for development. It had been used in part to fund major petrochemical and phosphate mining projects in the region and was an equitable sum for Kurdistan's development.

27. Mr. GARVALOV observed that, out of the five States in the region that had a Kurdish minority, Iraq had been the only one to enact legislation that gave the Kurds - for whatever reason - the degree of autonomy that they enjoyed. One of the four other States did not even recognize the Kurds as a minority, and Iraq had gone much further than the others in recognizing them.

28. Although the Convention had been incorporated into Iraqi legislation and could therefore be directly invoked in the courts, there appeared to be some misconceptions in the Government's understanding of certain articles.

Paragraph 9 of the report, for instance, seemed to interpret article 2 as prohibiting discrimination on grounds of social class; social class, however, was not synonymous with ethnic group or religious group. Under article 2, and also under articles 1, 4, 5 and 7, Iraq was required to prohibit discrimination on specifically ethnic or racial grounds in its own legislation, including the Penal Code. Similarly, there was a discrepancy between what the report considered to be compliance with article 4 of the Convention and what the article itself said, specifically article 4 (a): the propagation of "feelings of hatred among sections of the people" (report, para. 15) could just as easily be based on class as on race or ethnicity, and its prohibition did not fulfil the requirements of the Convention.

29. Mr. WOLFRUM, underscoring the delegation's proper understanding of the prohibition of racial discrimination in terms of jus cogens, said that he agreed with Mr. Garvalov that the legal regime governing the Kurds in Iran was far superior to that in neighbouring States, and was in fact an excellent regime per se.

30. Although he understood the thinking behind the acquisition of real estate by the central Government, some of his doubts had not been dispelled.

31. In addition to the information provided on the government posts held by Kurds and other minorities in the executive branch, he would at a later time appreciate details on their numbers in the police force, the judiciary and the legislature. He also would like to know whether the Government, which ensured that the Kurds could be educated in their own language, had taken care to ensure that they properly learned the language of the nation as well. No minority had a right to exclude itself from the life of the country as a whole, thus marginalizing itself.

32. Mrs. SADIQ ALI observed that Iraq, once cited by the United Nations Educational, Scientific and Cultural Organization (UNESCO) for its literacy campaigns and once a country that had provided free education up to the highest levels, was, under the impact of the sanctions, suffering from a lack of textbooks and materials. The strain on educational facilities might soon begin to affect enrolment as well. Iraqi youth had been left behind - by a decade - in the field of science and technology. The Committee should make a statement taking serious note of that deplorable situation, under article 7 of the Convention.

33. Mr. de GOUTTES, expressing appreciation for the interesting information provided, especially on the laws governing ethnic groups, said that he would still like to know how the Government was planning to publicize the conclusions and recommendations of the Committee in connection with the current and future reports of Iraq; and what measures it had taken or would take to develop training in human rights, tolerance and inter-ethnic understanding for the police and security forces and for the judiciary, as recommended in the Committee's general recommendation on the matter.

34. Mr. DIACONU (Country Rapporteur) said that he believed the Committee had been given a good picture of the prevailing situation. He wished to make the point, however, that if the Committee itself dealt with questions that came within the jurisdiction of other treaty bodies, it was not trying to extend

its own competence but to see those issues from its own specific angle of racial discrimination; and that it had a right to do so. He also wished to explain that he did not consider that Iraq's Penal Code was contrary to article 4 of the Convention but simply that it did not go far enough. That was the case in most other countries as well, but the Committee had to insist on full compliance. It should be clear to any jurist, for instance, that incitement to racial hatred was much broader than incitement to intercommunal bigotry. He looked forward to receiving fuller information in the next report and to a continued regular dialogue between Iraq and the Committee.

35. Mr. YOUSSIF (Iraq) said that the Penal Code articles cited, even if perhaps not as broad as article 4 of the Convention, certainly covered many of the same points. Intercommunal conflict, for instance, often springing from racial tensions, was an obstacle to national unity that could easily lead to the kind of civil wars that other countries were experiencing.

36. Under the Autonomy Act, education in Kurdistan was provided to Kurds and Arabs in their own language, and the same applied to minorities living in other regions. All, however, also learned the national language. Exceptional circumstances had obliged Iraq to suspend its literacy campaigns, but the delegation appreciated Mrs. Sadiq Ali's recognition of the usual quality of education in Iraq and hoped that the Committee would act on her proposal. The Government already provided courses in human rights for law enforcement officers, and the Committee's concluding observations on the report of Iraq would be published in the press and be brought to the attention of the competent officials.

37. Mr. HUSSAIN (Iraq) said that Iraq recognized the rights of all social groups, whether Kurds, Turkomans, Chaldeans, Armenians or any others, and also of all religious denominations. All were free to worship as they wished and all minorities, however small, could exercise their rights. He agreed fully with Mr. Wolfrum about the teaching of the main national language to minorities. It should be noted, however, that Kurdish was also taught in high schools throughout the country. The grave deterioration of education since the embargo was a sad fact, and he urged the Committee to make a statement on it. Iraq continued to do everything possible to promote education, which was still free.

38. Iraqi law prohibited the propagation of feelings of hatred among sections of the people because such hatred was the first step towards outright discrimination and even armed conflict, and had to be tackled at the earliest stage. The Government wanted to preserve the unity and harmony of the mosaic of ethnic groups and religious communities that was Iraq and therefore also outlawed intercommunal bigotry.

39. Regarding the respective mandates of the Committee and the other human rights treaty bodies, there had of course to be a certain leeway for the Committee to address matters that also fell within the purview of other committees. There were times, however, when it could be said that certain subjects were primarily the concern of the other committees and that members of the Committee should not try to twist the interpretation of the Convention in senses that were beyond its scope.

40. The CHAIRMAN said that he believed that, by continuing their dialogue, the Committee would be able to convince the delegation that it was not going beyond its mandate if it looked for discrimination on racial grounds in any area whatsoever, such as the treatment of refugees, children or prisoners, equality between men and women, or any other. Mr. Diaconu had expressed the Committee's point of view, which was a matter of great importance to all its members. The Committee in turn would, of course, bear in mind the two major difficulties in Iraq, the aggression and the embargo. The Committee had always expressed itself forcefully on such issues and indeed had been one of the first to do so.

41. Mr. YOUSSIF (Iraq) said that his delegation was confident of the Committee's concern, at all times, to fulfil its mandate objectively, and recognized the Committee's primary role in its field. It was gratified, too, that the language of dialogue had prevailed. It hoped that the annexes to its report could appear as an addendum, and that a version in Arabic, already available, would also be circulated.

42. The CHAIRMAN invited the Iraqi delegation to contact the secretariat about the distribution of the text in Arabic. He noted that, although Arabic had not always been an official language of the United Nations, Iraq had been able to submit its eleventh, twelfth and thirteenth periodic reports in that language. He reiterated the Committee's appreciation of the Iraqi delegation's attendance and collaboration.

43. The members of the delegation of Iraq withdrew.

CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES AND TO ALL OTHER TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION (agenda item 8) (CERD/C/368; CERD/C/55/Misc.28)

44. The CHAIRMAN drew the Committee's attention to the note by the Secretary-General (CERD/C/368) concerning article 15 of the Convention, and to the working paper (CERD/C/55/Misc.28) prepared by Mr. van Boven, who had again been appointed to examine relevant documents made available to the Committee.

45. Mr. van BOVEN, referring to the working paper (CERD/C/55/Misc.28), said that no copies had been received of petitions directly related to the principles and objectives of the Convention pursuant to article 15, paragraph 2 (a). In that connection, he recalled the Committee's opinions and recommendations, set out in paragraph 493 of its report to the General Assembly at its fifty-third session (A/53/18), including its request to the Secretary-General to provide it with copies of petitions and any other information relevant to the objectives of the Convention and available to him regarding the Territories mentioned in article 15, paragraph 2 (a), and inviting the Special Committee of 24, when devising its future work, to give more systematic attention, in particular, to matters directly related to the principles and objectives of the Convention. In addition, States parties administering Non-Self-Governing Territories or otherwise exercising jurisdiction over Territories were requested to include or continue to include, in their reports to be submitted pursuant to article 9, paragraph 1,

of the Convention, relevant information about the implementation of the Convention in all Territories under their jurisdiction. He suggested that the Committee should reiterate those opinions and recommendations, with slight modification in the light of the reply by the Secretary of the Special Committee relating to petitions pursuant to article 15, paragraph 2 (a), of the Convention.

46. No copies of petitions relating to article 15, paragraph 2 (a) had been received. With regard to article 15, paragraph 2 (b), he drew attention to paragraph 2 of the working paper, in particular to the material relating to East Timor, New Caledonia and Western Sahara. Most of the material was out of date because of events such as the planned referendum about the future status of East Timor, a foreseen referendum for self-determination of the people of Western Sahara and, of immediate interest to the Committee, the Nouméa Accord, signed on 5 May 1998, on the future status of New Caledonia, which purported to give full recognition of the Kanak identity, regarding which an extensive document on the Kanak identity was attached to the Accord - in his view a welcome inclusion. That event had been the major development, during the past year, relating to Territories to which General Assembly resolution 1514 (XV) applied.

47. As could be seen from paragraph 3 of the working paper, concerning relations with the Special Committee of 24, the Secretary of the latter body had stated that there had been no petitions relating to article 15, paragraph 2 (a) of the Convention. No communication had been received about material relating to article 15, paragraph 2 (b), probably because the Special Committee's 1998 session had already concluded before the Committee had drawn up its opinions and recommendations in August 1998.

48. The CHAIRMAN thanked Mr. van Boven, on behalf of the Committee, for the working paper and further information provided. He found it disquieting for the Committee to be told that no petitions or other material relating to article 15 of the Convention had been received, since he was aware, from what he had learned while attending meetings of persons chairing the human rights treaty bodies, that thousands of petitions remained without attention because of shortage of personnel and funds. He was concerned, too, about the lack of material from non-governmental organizations (NGOs) relating to Non-Self-Governing Territories; he would welcome such material, addressed either to himself or to Mr. van Boven.

49. He took it that the Committee wished to invite Mr. van Boven to draft a brief document reiterating the Committee's opinions and recommendations, including a particular appeal for any relevant information relating to Non-Self-Governing Territories, even if the subject-matter might seem appropriately covered by article 9 of the Convention.

50. It was so decided.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION (agenda item 6)

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION

51. Mr. BANTON briefly reviewed, at the invitation of the Chairman, the proceedings of the Third Committee of the General Assembly relating to the annual report submitted by the Committee. Regrettably, the debate had been combined with discussion of the reports of other bodies, as in previous sessions, and with preparations for the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. In addition, certain delegations had taken up time in raising political issues such as Kashmir, Israel, Eritrea and Ethiopia. The resolutions adopted by the General Assembly had focused, as in the past, on two main causes of racial discrimination: colonialism and the dissemination of ideas of racial superiority, both condemned in the preamble to the Convention. Further causes, however, had been noted in resolution 53/132 adopted relating to the Third Decade to Combat Racism and Racial Discrimination; they included globalization, inequitable distribution of wealth, marginalization and social exclusion. And mention had been made for the first time, in resolution 53/133 on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance, of racist and xenophobic ideas in political circles.

52. During the debates, Mr. Valencia Rodriguez had effectively put forward the Committee's views, and had expressed regret that the Committee's report had been circulated to the participants very late. One significant contribution to the discussions had come from the representative of the Democratic Republic of the Congo; a text had been made available and could perhaps be discussed when the Committee came to consider that country's periodic report later in the current session.

53. Mr. VALENCIA RODRIGUEZ said that, at the Committee's request, he had taken part in the Third Committee's debate on racism and racial discrimination at the previous session of the General Assembly, in his capacity as representative of Ecuador. He had outlined the Committee's main concerns, as expressed in its report (A/53/18), and particularly its decisions 7 (53) and 8 (53) on the need to extend one of its sessions and to hold its winter session in New York.

54. Resolutions in the Third Committee were now adopted by consensus, a prerequisite for which were informal discussions and negotiations in the various groups. He had, accordingly, taken an active part in the discussion relating to CERD's work by the Group of 77 and China, the first of the groups to consider the draft resolution. The first draft of the resolution had merely taken note of the Committee's decisions 7 (53) and 8 (53). Participants had not been in favour of according the Committee a longer session, arguing that it was up to date with its own work, nor of allowing it to meet in New York, since the Office of the United Nations High Commissioner for Human Rights was in Geneva. His delegation had considered submitting an amendment to the effect that the General Assembly endorsed the two decisions, but, given the strong opposition, that would certainly have prompted a vote

and sharply divided the Third Committee. A compromise had been suggested, whereby the Committee's summer session would be extended by five working days in 1999 and 2000 and the General Assembly would reconsider the length of sessions and the possible holding of a session in New York at its fifty-fifth Session in 2000. After further consultations, it had emerged that no further concessions could be made and Ecuador had accordingly withdrawn its sponsorship of the draft resolution. The draft resolution was eventually adopted as General Assembly resolution A/53/131 entitled "International Convention on the Elimination of All Forms of Racial Discrimination", with 50 sponsors, among them Argentina, Bulgaria, Cyprus, France, Germany, Netherlands, Pakistan, Romania, Sweden and the United Kingdom. Egypt and Algeria had spoken in explanation of vote before the voting, and Turkey, the United States of America and Ecuador after the voting.

55. He had been particularly anxious to amend the original draft of operative paragraphs 2, 3, 4 and 6, of which the final version was before the Committee. The original version of operative paragraph 5 had commended the Committee on its constant efforts for the effective implementation of international human rights instruments by means of continual improvements in its working methods, especially its procedure for reviewing the implementation of the Convention in those States whose reports are excessibly overdue. Slovenia, on behalf of the sponsors, had revised the text and a vote had in fact been taken, showing that there was still opposition. The adopted version read: "Commends the Committee on its continuing efforts to contribute to the effective implementation of the Convention and notes its continuing efforts to improve its working methods". Paragraphs 18 and 20 had also been changed as a result of the efforts made to improve the text.

56. The CHAIRMAN thanked Mr. Banton and Mr. Valencia Rodriguez for their explanations and suggested that the Committee should return to the issue at a later meeting.

The meeting rose at 1.05 p.m.